IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

WP(C).No. 35816 of 2007(L)

OS.173/2004 of PRL.SUB COURT,THRISSUR
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PETITIONER:

DR.JAYARAJ, AGED 42 YEARS,
(MANAGING DIRECTOR ABHAYA HOSPITAL PVT. LTD),
S/O.KRISHNAN, THALAPPILLY HOUSE, PO. KOZHUKULLY,
MOORKANIKARA, THRISSUR DIST.

BY ADV. SRI.M.H.HANIL KUMAR
SRI.K.C.VISWAMBHARAN

RESPONDENT:

DR.BABU AHAMMED KABEER,
S/O.ABDULLA, AGED 64, ROHINI,
KOTTAPPURAM ROAD, POONKUNNAM, THRISSUR DIST.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.35816 of 2007

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Dated this the 4th day of December, 2007.

JUDGMENT

This Writ Petition is preferred to direct the Subordinate Judge, Thrissur to consider and pass appropriate orders on Ext.P2 application. Grievance of the writ petitioner is that when PW1 was cross examined, he was confronted with a previous deposition and the Commissioner refused to mark that relevant portion. Now as per the Amended C.P.C. when an objection is raised during recording of the evidence before the Commissioner it shall be recorded by him and decided by the court at the stage of argument. So, the correctness or otherwise of the disallowance of marking a portion of a deposition had to be decided by the court as the matter is pending before the court or at any stage when the parties want it to be heard. Such approach of the Commissioner shall not be a ground to change the Commissioner in examining another witness.

2. I am informed by the learned counsel that there were some unpleasant situation created by the Commissioner. The Commissioner is an officer of the court and as while recording evidence, the Commissioner has to act independently and judiciously without casting any aspersion on anybody, but to record what the witness has stated and if any objection is raised to note the objection and if any demeanour is observed note the demeanour and leave the matter to the court for further decision. Just because he has disallowed one question it shall not be treated as a ground to change the Commissioner for recording evidence of another witness.

I do not find any merit in the Writ Petition and it is dismissed.

M.N.Krishnan,
Judge.

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